

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number: 13906-114001
	Application Number 10/784,196	Filed February 24, 2004
	First Named Inventor Peter Gernold	
	Art Unit 2166	Examiner Leon J. Harper
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a Notice of Appeal.</p> <p>The review is requested for the reasons stated on the attached sheets.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record <u>54,777</u> (Reg. No.)</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p> <p><input checked="" type="checkbox"/> Total of 5 pages in addition to the Notice of Appeal are submitted.</p>		

Barbara A Benoit
Signature

Barbara A. Benoit
Typed or printed name

(202) 783-5070
Telephone number

August 8, 2008
Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Peter Gernold
Serial No. : 10/784,196
Filed : February 24, 2004
Title : GENERATING DATA SUBSCRIPTIONS BASED ON APPLICATION DATA

Art Unit : 2166
Examiner : Leon J. Harper
Conf. No. : 9245

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Pursuant to United States Patent and Trademark Office OG Notices: 12 July 2005 - New Pre-Appeal Brief Conference Pilot Program, a request for a review of identified matters on appeal is hereby submitted with the Notice of Appeal. Review of these identified matters by a panel of examiners is requested because the rejections of record are clearly not proper and are without basis, in view of a clear legal or factual deficiency in the rejections. All rights to address additional matters on appeal in any subsequent appeal brief are hereby reserved.

Claims 1-3, 5-7, 10-13, 15-17, 19, and 20 are pending in application, with claims 1, 7, and 15 being independent. Claims 1-3, 5-7, 10-13, 15-17, 19, and 20 have been rejected as being unpatentable over U.S. Patent No. 5,870,605 (Bracho) in view of U.S. Patent No. 5,884,324 (Chen). Applicant specifically asks the panel to review the issue highlighted below.

Neither Bracho nor Cheng describes or suggests the subject matter recited by independent claims 1, 7 and 15. Claim 1 (emphasis added) recites:

A computer-readable medium having embodied thereon a computer program configured to generate data subscriptions, the medium comprising one or more code segments configured to:

receive user input identifying a publication to be used to create data subscriptions, the publication being one of multiple predetermined publications identifying a type of data capable of being distributed to data sites;

receive user input identifying a distribution criterion by which data is to be distributed to data sites by subscriptions automatically generated without human intervention;

store, in computer-readable medium for later access, subscription-generation information including the identified publication and the identified distribution criterion;

access, using a first computer system, the subscription-generation information identifying the publication and the distribution criterion;

access, using the first computer system and the accessed subscription-generation information, application data of various data types, including the type of data identified by the subscription-generation information;

generate, using the first computer system, data subscriptions for the publication to be distributed to data sites corresponding to computer systems that are distinct from the first computer system, the computer systems and the first computer system being connected in a network of distributed computer systems operating an application program having the application data of the various data types, wherein each data subscription 1) is generated automatically by the first computer system based only on the type of data to be distributed to data sites, the accessed application data, and the distribution criterion and 2) identifies a portion of the application data to be distributed to one or more of the data sites of the second computer system;

generate assignments of data sites to the generated data subscriptions, the assignments being generated based on application data, using the first computer system, and automatically without human intervention;

store, in computer-readable medium for later access, the generated assignments; and

distribute a portion of the application data to the data sites corresponding to computer systems, the distribution being based on the data subscriptions generated by the first computer system and the generated assignments.

In contrast, Bracho describes techniques for making information available via a networked system of publishers and subscribers. See Bracho at col. 1, lines 19-21. "Publishers" publish information, and "subscribers" request and use the information. See Bracho at col. 1, lines 63-65. In particular, each subscriber receives information (or an event) published by the publisher if, and only if, the events match subscription criteria specified by the subscriber. See Bracho at Abstract; col. 2, lines 19-21. To receive information, the subscribers register a subscription for an event type. See Bracho at col. 8, lines 44-46. Subscribers then specify the information that they want to receive by an event type and the content of the event. See Bracho at col. 5, lines 24-25.

As such, Bracho describes a system in which information is published to subscribers based on the event and the content of the event as specified by the subscriber. Bracho relies on the subscribers to register a subscription for an event type and indicate the content and types of events that the subscriber wishes to receive. In contrast to Bracho's approach, claim 1 recites (among other features):

generating, using the first computer system, data subscriptions for the publication to be distributed to data sites corresponding to computer systems that are distinct from the first computer system,

generating assignments of data sites to the generated data subscriptions, the assignments being generated based on application data, using the first computer system, and automatically without human intervention; and

distributing a portion of the application data to the data sites corresponding to computer systems, the distribution being based on the data subscriptions generated by the first computer system and the generated assignments.

The action indicates that generating assignments of data sites to the generated data subscriptions, the assignments being generated based on application data, using the first computer system, and automatically without human intervention is disclosed by Bracho at column 6, lines 1-10. Applicant disagrees. Rather, the cited portion of Bracho states:

The described embodiment is centered around the sending (publication) and receiving (subscribing) of events. Before a publisher can publish events, the publisher must define and advertise the events that it will publish. In order for the events to make sense, publishers and subscribers need to understand each other. For this reason, the described embodiment uses a standard specification language to define events.

Hence, Bracho in this portion describes defining events, not generating assignments of data sites to the generated data subscriptions, the assignments being generated based on application data, using the first computer system, and automatically without human intervention, as recited by claim 1.

Cheng describes techniques for accessing information stored in a database on a database management system. See Cheng at col. 1, lines 6-8. Cheng's techniques include a replication agent for providing replicated data from the database management system to a remote user. See Cheng at col. 1, lines 8-10. Cheng's replication agent receives a subscription message from the remote client. See Cheng at col. 3, lines 45-47. The subscription message identifies data that the remote client wants replicated from the database management system and specifies a replication period. See Cheng at col. 3, lines 48-53. The data replication agent accesses and reads a change log stored in the database management system and transmits changed data to the remote client. See Cheng at col. 3, lines 59-62 and 65-66.

As such, Cheng's techniques disclose receiving, from a remote client, a subscription message that identifies data to send to the remote client, and transmitting changes data to that remote client in response to the received request. Thus, Cheng does not remedy the failure of Bracho to describe or suggest subject matter recited by claim 1.

For at least these reasons, and the reasons stated in applicant's reply to action of September 21, 2007 at pages 8-11, the rejection of independent claim 1 and claim 15, which recites subject matter similar to that of claim 1, as well as their respective dependent claims 2, 3, 5, 6, 16, 17, 19 and 20, is improper and should be withdrawn.

Independent claim 7 recites, *inter alia*, a central system having a central database storing application data of various data types for an application program, storing data subscriptions to receive portions of the application data and configured to generate assignments of data subscriptions to distributed systems such that each assignment identifies a particular data subscription and a particular distributed system that is to receive a portion of the type of application data that corresponds to the distribution criteria for the type of application data included in the data subscription. The assignments of data subscriptions are automatically generated based on the application data and the distribution criteria.

As discussed above, Bracho relies on the subscribers to register a subscription for an event type and indicate the content and types of events that the subscriber wishes to receive. In contrast, amended claim 7 recites the assignments of data subscriptions are automatically generated based on the application data and the distribution criteria. Furthermore, and as discussed above, Cheng does not remedy the failure of Bracho to describe or suggest this feature. Because neither Bracho, Cheng, nor any proper combination of these references describes or suggests at least this feature of claim 7, the rejection of claim 7 and claims 10-13, which depend from claim 7, is improper and should be withdrawn.

In addition, claims 1, 7, 15 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 10, and 19 of copending Application No. 10/784,848. Without conceding obviousness, applicant respectfully requests that this provisional rejection be held in abeyance until the claims of both this application and those in Application No. 10/784,848 are otherwise held to be allowable.

Applicant : Peter Gernold
Serial No. : 10/784,196
Filed : February 24, 2004
Page : 5 of 5

Attorney's Docket No.: 13906-114001 / 2003P00306
US01

Conclusion and Relief

Applicant submits that all claims are in condition for allowance.

This request is filed with a Notice of Appeal. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: Aug. 8, 2008

Barbara A Benoit
Barbara A. Benoit
Reg. No. 54,777

Customer No. 26171
Fish & Richardson P.C.
1425 K Street, N.W. - 11th Floor
Washington, DC 20005-3500
Telephone: (202) 783-5070
Facsimile: (202) 783-2331